

MAR 13 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERESA MACIAS, both individually, in
her own right, and as successor in interest
to Miguel Sanchez, her deceased son,

Plaintiff - Appellant,

v.

JOSEPH MCGRATH; et al.,

Defendants - Appellees.

No. 04-15968

D.C. No. CV-01-00806-PJH

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Argued and Submitted February 14, 2006
San Francisco, California

Before: SILVERMAN, GRABER, and CLIFTON, Circuit Judges.

Plaintiff Teresa Macias appeals the district court's order granting summary judgment on her negligence claim. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

The district court granted summary judgment on the 42 U.S.C. § 1983 claims, concluding that Defendant Fox's conduct was reasonable. Macias does not challenge this part of the district court's order.

The district court's grant of summary judgment on the negligence claim logically and properly followed the grant of summary judgment on the § 1983 claim, as a matter of law. To prevail on her negligence claim, Macias must show that Fox acted unreasonably. Since the court already held that Fox acted reasonably for § 1983 purposes, the negligence claim fails. Macias presented no evidence challenging the reasonableness of Fox's actions beyond the Declaration of Gabriel Aguilar. The district court viewed the facts alleged in the declaration in the light most favorable to Macias and nonetheless found that it raised no genuine issue of material fact as to the reasonableness of Fox's conduct.

We reject Macias's argument that the district court, in its November 13, 2003, Order, assured her that she would not have to come forth with any evidence of negligence. Macias misrepresents the plain language and intent of this order, which merely limited the issues that Fox would be allowed to raise in a renewed motion for summary judgment.

AFFIRMED.